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E.O. 12958: DECL: 05/01/2019  
TAGS: [KNNP](#) [PREL](#) [ETTC](#) [CA](#)  
SUBJECT: RESPONSE TO CANADA,S QUESTIONS ON  
COUNTERPROLIFERATION POLICY

REF: A. 09OTTAWA268  
    [1](#)B. 08OTTAWA 1245  
    [1](#)C. 08STATE99000  
    [1](#)D. 08STATE97505  
    [1](#)E. 08OTTAWA968

Classified By: ISN- Tony Foley, REASONS 1.4 (B) AND (D)

[1](#)1. (U) This is an action request. Please see paragraph 2.  
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OBJECTIVES/ACTION REQUEST  
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[1](#)2. (C) Washington requests Post deliver the non-paper in paragraph 3 to appropriate host government officials in the Department of Foreign Affairs and International Trade in response to the action request in REF A. Post should pursue the following objectives:

-- Applaud Canada,s efforts to reinvigorate its counterproliferation regime and note that we are pleased to assist Canada,s efforts in way we can.

-- Note that strong counterproliferation policies will strengthen Canada,s national security by protecting Canada from exploitation by proliferators.

-- Inform Canada that many of the issues raised in their nonpaper are complex and we would be pleased to host a Canadian delegation to Washington in the coming months, if DFAIT wants to further discuss these important issues.

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NONPAPER  
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[1](#)3. (SBU) BEGIN NONPAPER FOR CANADA

Thank you for your request. We have compiled information that we hope will be helpful in your counterproliferation regime review process. Given the sensitivity of information in our response, please handle in official government channels only and do not disclose this information publicly. Due to the complexity of these issues, we would be pleased to host a Canadian delegation to Washington in the coming months to discuss these issues in more detail.

Overall Counter-Proliferation Framework

[1](#)1. Does your government have specific legislation (e.g. a Counter-Proliferation Act) that provides tools for your officials to prevent and prosecute the proliferation of WMD. If so, how is proliferation defined in your legislation and what activities are included? Please provide the link or document if possible.

-- The United States does not have one specific piece of legislation that covers all aspects of counterproliferation. Instead, there are a number of laws that provide both a basis for regulating activities that may be of proliferation concern and a basis for criminal prosecution of activities that are of proliferation concern. The United States,

report to the United Nations Security Council Committee established pursuant to resolution 1540 outlines U.S. laws that pertain to our counterproliferation efforts.

-- There are also a number of Presidential Directives that provide guidance to the U.S. interagency on counterproliferation and specific proliferation-related issues, such as interdictions, export control reform, and implementation of the Additional Protocol. The National Security Council's (NSC's) Nonproliferation Directorate is responsible for ensuring that agencies are coordinating their actions to implement the provisions of the Directives.

12. Does your government have an inter-agency-wide committee structure that coordinates counter-proliferation efforts?

-- The United States utilizes an interagency approach to counterproliferation and nonproliferation issues. There are a variety of issue-specific interagency working groups that handle proliferation-related issues, such as export control decisions, the designation of entities of proliferation concern, proliferation finance, and interdictions.

13. Do you currently have a counter-proliferation policy reform process under way? If so, please indicate what aspects of your CP framework are being improved.

-- The United States government is continually updating its counterproliferation and nonproliferation processes to counter emerging proliferation threats and improve the coordination on counterproliferation and nonproliferation issues across our government.

-- Most recently, the White House has created the position of a White House Coordinator for Arms Control and Prevention of Weapons of Mass Destruction Proliferation and Terrorism. The NSC's Nonproliferation Directorate reports to the White House Coordinator.

#### Immigration Legislative/Policy Framework

1. Do you have specific provisions in your immigration legislation (or other related legislation) regarding the proliferation of WMD, on which they can base a denial of entry to an individual?

-- Yes.

2. If so, how are these provisions worded and what act are they found in? If there are no specific legislative provisions dealing with proliferation of WMD, how do they deal with it (e.g. do they have a "catch all" provision, jurisprudence, etc)?

-- Section 212(a)(3)(A) of the Immigration and Nationality Act (INA) makes inadmissible any person coming to the U.S. solely, incidentally, or principally to violate or evade any law prohibiting the exports of goods, technology, or sensitive information from the U.S.

3. Is your counter proliferation policy or legislation discretionary? That is, do you apply it to all countries or consider individuals from a certain country to pose a greater risk than individuals from another country? If so, can you share your list of countries?

-- U.S. nonproliferation visa screening is conducted pursuant to the Visas Mantis program. The applicant's nationality, background, and purpose of travel, including whether contacts involve a field on the Technology Alert List (TAL), all are taken into account in determining whether the applicant will undergo a Visas Mantis review. (Visas Mantis are required for a certain group of countries deemed to be of risk: Cuba, Iran, Sudan, Syria, Belarus, China, Egypt, India, Iraq, Israel, Libya, North Korea, Pakistan, Russia, Taiwan, Ukraine, and Venezuela.)

4. Does legislation/jurisprudence render those deemed as

proliferators permanently inadmissible?

-- No. Refusals issued for nonproliferation reasons are made on a case-by-case basis for the particular visa application and are not permanent. Applicants may reapply.

#### Admissibility/Screening of Immigration Applications

¶5. Does your government routinely vet visa applicants for proliferation?

-- Yes.

¶6. If so, generally, on what grounds are applicants found inadmissible?

-- Nonproliferation denials are based on section 212(a)(3)(A) of the INA. An inadmissibility on this ground requires a finding that the applicant is seeking entry into the U.S. solely, incidentally, or principally to violate or evade any law prohibiting the exports of goods, technology, or sensitive information from the U.S.

¶7. If so, how do you define proliferation activities that might render one inadmissible and what is the relevant legislation on which inadmissibility is based?

-- Based on the available information, reviewers must assess that the applicant is coming to the U.S. solely, incidentally, or principally to violate or evade any law prohibiting the exports of goods, technology, or sensitive information from the U.S. Proliferation screening is conducted on a case-by-case basis and evaluated consistent with section 212(a)(3)(a) of the INA.

¶8. What is the legal threshold that has to be met in order to find an individual inadmissible for posing a proliferation risk/engaging in the proliferation of WMD? For example, in Canada it is "reasonable grounds to believe".

-- Knowledge or a reasonable ground to believe.

¶9. What would you define as engaging in the proliferation of WMD? (e.g. providing material assistance; technological know-how; directly working for a country's WMD program; proliferation finance; brokering)

-- The Bureau of International Security and Nonproliferation (ISN) at the Department of State reviews Visas Mantis applicants on a case-by-case basis for technical, proliferation, and export control concerns in the areas of missile, chemical and biological, conventional weapon, and nuclear technology. When reviewing the visa applications, we consider all available information, including but not limited to intelligence reporting, papers and denial notifications shared in the nonproliferation regimes, sanctions information, etc. In order to recommend a nonproliferation denial, reviewers must assess, based on this information, that the applicant is coming to the U.S. solely, incidentally, or principally to violate or evade any law prohibiting the exports of goods, technology, or sensitive information from the U.S.

#### Categories of Immigrants

¶10. Is this policy/legislation applied equally to visitors, students, workers and permanent residents? If not, what are the differences in screening visitors, students and workers versus screening permanent residents?

-- Yes.

¶11. Are there any special screening procedures in place for students?

-- No. All nonproliferation screening is conducted under the Visas Mantis program, including student vetting.

## International Treaties

¶12. Would your government deny entry to a person (e.g. scientist, engineer, etc) who works for the WMD program of a country that has not ratified the international treaties aimed at preventing the proliferation of WMD? (e.g. Non-Proliferation Treaty)

-- The U.S. does not deny applicants on the basis of the country not being a treaty signatory, but if the U.S. assessed the individual was seeking entry to the U.S. solely, principally, or incidentally engage in activities involving evasion of U.S. export controls, we would recommend the applicant be denied for nonproliferation concerns.

## Shipment of Goods

### Export Controls - Catch-All/End-Use Controls

¶1. Please describe how your country implements export controls for items not on an official list of controlled goods, technology and services but still assessed to be of proliferation concern (i.e. "catch-all" or "end-use" controls). What is the process by which your "catch-all" is triggered? For example, how would your country address the following situation: A shipment of seismic monitoring equipment is to be made to a country with a nuclear program of concern. The items are not controlled under your country's controlled goods lists, but the equipment is assessed by seismic experts as having nuclear weapon testing applications.

-- The Department of Commerce/ Bureau of Industry and Security (DOC/BIS) implements end-use controls for all items subject to the Export Administration Regulations (EAR), which includes commodities, software, and technology. These controls impose a license requirement for shipments to certain nuclear, missile, or chemical and biological weapons end-uses or end-users. The EAR also imposes a license requirement on U.S. persons, support of proliferation. This control applies to activities of U.S. persons rather than items; therefore, it applies even when U.S. persons are exporting, reexporting, or transferring items that do not otherwise require a license. It also applies to performance of any contract, service, or employment that assists in certain proliferation activities when those activities are unrelated to exports.

-- These requirements apply regardless of whether the item being shipped is assessed to be of proliferation concern. They are triggered when the exporter (or reexporter, or U.S. person) has knowledge or is informed of a prohibited end-user or end-use. Knowledge is defined as including not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts. BIS may inform persons individually that a license is required for a particular transaction or activity because of an unacceptable risk that the items may be used in or diverted to proliferation activities or the activity could involve prohibited types of participation or support. BIS may also inform the public generally that a license is required for particular transactions with particular end-users, as it does with publication of the Entity List.

-- To assist exporters in determining when they have knowledge, the EAR contains Know Your Customer guidance and red flag indicators to illustrate scenarios in which exporters should know that a transaction has raised concerns that should be resolved before continuing. In the example of the seismic monitoring equipment, the knowledge of its nuclear weapon testing applications in conjunction with a destination that is a country with a nuclear program of concern should be a red flag that will prompt the exporter to confirm that the end-use and end-user

do not pose a proliferation threat before proceeding with the transaction.

12. What successes and challenges have you encountered in implementing "catch-alls"? For example, any challenges in using intelligence as court evidence.

-- The biggest obstacle to catch-all implementation and enforcement is knowledge. Illicit procurement networks for programs of proliferation concern employ deceptive tactics and falsify documents to make transactions of proliferation concern seem to be innocent commercial transactions. Therefore, one of the challenges to catch-all implementation is industry's ability to identify a suspect transaction. When DOC/BIS has specific information, it informs the public either by additions to the Entity List or by informing a potential exporter(s) of the activity of concern. Once an exporter has been informed, individually or publicly, he has knowledge of the proliferation threat. Special Agents also routinely face the challenge of proving knowledge in criminal investigations.

-- The successful implementation of catch all controls is a useful tool in assisting with the enforcement of United States export regulations. Unfortunately, there are individuals and companies who knowingly and willfully violate export controls identified in the EAR. Proliferation networks for programs of concern routinely utilize deceptive tactics as a means of illegally procuring dual-use commodities. Using these types of tactics to circumvent or evade export regulation often results in criminal liability.

-- As for using intelligence as court evidence, Special Agents routinely run into challenges when court evidence may involve classified intelligence information. This challenge is often successfully overcome when agents utilize a variety of investigative tools and regulatory controls to build a parallel investigation based on non-classified, factual information. Investigations involving dual-use commodities other than those listed on the CCL are routinely investigated jointly with our law enforcement partners worldwide.

13. Does your country maintain any entity lists related to export controls? If so, could you describe them?

-- The United States maintains multiple lists against which exporters screen potential export transactions, including the Denied Parties List, the Specially Designated Nationals List, and the Entity List. The Excluded Parties List System (EPLS) is intended to include many, but not all of the publicly published lists but not all list-based requirements are the same. All license applications for exports of United States Munitions List (USML) items are screened against the State Department's Directorate of Defense Trade Controls (DDTC) non-public Watch List.

-- The Department of Commerce Entity List is comprised of a list of names of certain foreign persons - including businesses, research institutions, government and private organizations, individuals, and other types of legal persons - that are subject to specific license requirements for the export, reexport, or transfer (in-country) of specified items. On an individual basis, the persons on the Entity List are subject to licensing requirements and policies supplemental to those found elsewhere in the EAR.

-- BIS first published the Entity List in February 1997 as part of its efforts to inform the public of entities who have engaged in activities that could result in an increased risk of the diversion of exported, reexported, and transferred (in-country) items to weapons of mass destruction (WMD) programs. Since its initial publication, grounds for inclusion on the Entity List have expanded to activities sanctioned by the State Department and activities contrary to U.S. national security or foreign policy interests. The Department of Commerce Entity List can be found online, on the BIS website: [www.bis.doc.gov](http://www.bis.doc.gov).



## Export Controls - Entity Lists

14. What successes and challenges have you encountered in using, sharing and maintaining such lists? For example, how would your country address the following situation: An entity's application for an export licence is denied. It subsequently changes its name and a new application is submitted.

-- DOC/BIS enforcement agents use all lists generated by BIS when reviewing license applications, and screen all information on new applications against information in its licensing and enforcement databases which have proven effective in deterring unauthorized exports. BIS also has an internal Watch List of companies that it uses to make a recommendation to deny current pending and future export license applications. In addition, BIS has authority to take appropriate investigative actions. In situations where entities change names, BIS will attempt to catch these diversionary tactics during the normal course of conducting export reviews.

-- Prior to requesting a defense trade authorization, all U.S. persons are required to register with State/DDTC. The Office of Defense Trade Controls Compliance is responsible for the registration of U.S. manufacturers, exporters and brokers generally engaged in the business of defense trade pursuant to Section 122 of the International Traffic in Arms Regulations (ITAR) (22 C.F.R. 120-130), the federal regulations that implement the AECA. The office is also responsible for registration of foreign persons subject to U.S. law who are engaged in brokering pursuant to Section 129 of the ITAR.

-- Under the ITAR, requests for registration and licensing and information on the identity of U.S. or foreign persons (entities and individuals) contained in those requests are the screened against the State/DDTC Watch List. Pursuant to Section 38(b) of the AECA, all registration submissions are referred to the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) for a law enforcement assessment. If a licensing request is denied due to foreign policy or national security concerns, those same concerns would apply regardless of the applicant or registrant. If an export request was denied due to the applicant or registrant, that entity would be the subject of a Watch List entry. Any subsequent export or registration request would be the subject of a computer query of the Watch List and the entity of concern would be identified. The Watch List is updated on a daily basis to ensure that entities of concern do not receive USML exports.

## Export Controls - Withdrawals

15. What is your country's approach to export application withdrawals (i.e. where a prospective exporter withdraws their application before an official decision is made regarding approval or denial)? Do you ever encourage moral suasion that may result in the withdrawal of an application as opposed to denying permits?

-- DOC/BIS will not allow withdrawal of an application for which denial is imminent if the item is controlled by a regime that has a no undercut provision; otherwise, BIS will return an application without action at the applicant's request. BIS persuades applicants to withdraw only when a change in policy is imminent (e.g., BIS will inform the applicant that the application would be denied under current policy, but will be likely to be approved under a new policy to be implemented in the future).

-- As for State/DDTC, applicants may request a withdrawal of a license application at anytime during the adjudication process.

16. Do you track export application withdrawals in any way (in terms of domestic applicant, end user or goods)? If so how is the information used and do you share it with border, law enforcement and intelligence agencies?

-- At DOC/BIS all incoming license applications go through a review process from an enforcement perspective and withdrawals are noted in an electronic database and tracked for the reasons for withdrawal. DOC/BIS compares shipment data with licensing data (including withdrawals) to determine whether an export complies with the EAR, and if not, enforcement action is taken.

-- DOC/BIS also uses the information when new license applications are received involving the same potential parties and includes that information in its case analysis when it refers license applications to the other agencies for review and recommendation of outcome.

-- State/DDTC analysts periodically review license denials, withdrawals and licenses returned without action (RWA) for compliance concerns.

#### Brokering

17. Please describe your country's process for investigating and prosecuting brokering offenses, particularly those involving: (a) brokering activities carried out in your national territory facilitating transfers between two foreign countries; and (b) nationals of your country conducting brokering activities outside of your national territory for transfers between two foreign countries.

-- Section 38 of the Arms Export Control Act was amended in 1996 to require the registration and licensing of brokers who engage in facilitating deals involving the manufacture, export, import or transfer of defense articles or defense services. The ITAR was amended in 1997 to include a new Part 129 on brokering and is overseen by the Directorate of Defense Trade Controls. Criminal and civil investigations of brokering activities are covered by the Arms Export Control Act in the same manner as export activities.

-- Civil enforcement of the brokering regulations is the responsibility of the Office of Defense Trade Controls Compliance. Criminal enforcement of the brokering regulations is the responsibility of the federal law enforcement community. Criminal investigations are primarily conducted by DHS/ICE and the Federal Bureau of Investigation.

The Department of Justice, U.S. Attorneys are responsible for criminal prosecution.

-- The U.S. brokering statute and implementing regulation focuses on the control of the activities as follows: Brokering activities covered by the AECA and the ITAR may involve U.S. or foreign persons brokering U.S. defense articles or defense services; may involve U.S. persons brokering foreign defense articles; or foreign persons aiding in brokering activities involving U.S. persons.

-- The EAR does not define brokering. Restrictions on U.S. Persons, activities in support of proliferation activities, however, impose a license requirement on exports, reexports or transfer by U.S. persons or support of such exports, reexports, or transfers where that person knows the item will be used in certain proliferation activities. (Support means any action, including financing, transportation, and freight forwarding, by which a person facilitates an export, reexport, or transfer.) Further, no U.S. person may knowingly perform any contract, service, or employment that assists in certain proliferation activities even when those activities are unrelated to exports. BIS may inform U.S. persons, either individually by specific notice or through amendment to the EAR, that a license is required because an activity could involve such participation and support.

18. What successes and challenges have you encountered in this process?

-- State/DDTC and the federal law enforcement community have had a number of civil and criminal enforcement cases of the

brokering regulations that have been briefed to the UN Government Group of Experts on Illicit Brokering and other international organizations. The civil cases that are public knowledge, although limited in number, may be viewed on DDTC's website ([www.pmddtc.state.gov](http://www.pmddtc.state.gov)) under Compliance Consent Agreements. The Department of Justice also maintains a public website of various AECA prosecutions and convictions, which may reflect illicit brokering or illicit arms trafficking activities.

¶9. Does your country require brokers to register in a national registry? Which government department or agency manages this registry?

-- State/DDTC Compliance is responsible for the registration of U.S. manufacturers, exporters and brokers generally engaged in the business of defense trade pursuant to Section 122 of the ITAR (22 C.F.R. 120-130). The office is also responsible for registration of foreign persons subject to U.S. law who are engaged in brokering pursuant to Section 129 of the ITAR.

#### Re- Export Authorizations

¶10. Do you have laws and regulations controlling re-exports? If so, please describe them, including their scope (i.e. which items are covered) and their life span coverage (i.e. is authorization required for further re-export from a third destination to a fourth destination?)

-- Reexports of U.S. origin items wherever located are subject to the EAR, regardless of number of destinations or time span. The EAR also covers foreign made items containing above a certain percentage by value of U.S. content and certain direct products of U.S. technology.

-- The ITAR requires that the written approval of the State/DDTC must be obtained before reselling, transferring, transshipping, or disposing of a defense article to any end user, end use or destination other than as stated on the export license, or on the Shipper's Declaration in cases where an exemption is claimed under this subchapter. Exporters must ascertain the specific end-user and end-use prior to submitting an application to DDTC.

¶11. How are these controls implemented and enforced?

-- State/DDTC's Blue Lantern end-use verification checks may be initiated to confirm the end-use and end-user of a reexport. Evidence of unauthorized activity will result in referral to civil or criminal enforcement authorities.

-- As for DOC/BIS, the implementation requirements are set forth in the EAR. Enforcement actions include performing end-use verification checks to ensure items are only exported as authorized. Results from these visits are documented and passed on for further investigative actions as necessary. Additionally, a limited number of end-use checks are conducted on items that do not require a license to a location but may require one if reexported.

-- Through routine investigative outreaches, BIS Special Agents educate the dual-use exporting community on the effective use of End-Use statements and Destination Control Statements to ensure due diligence is applied when determining the actual end use of the exported commodities. Agents review export records and automated tracking systems to verify end use destinations to ensure compliance with the EAR.

#### Resource Implications

¶12. Approximately how many export, brokering and re-export license or permit applications do you receive annually? What ratio are withdrawn, denied or approved?

-- In Fiscal Year 2008, DOC/BIS processed 21,293 applications (an increase of nine percent over Fiscal Year 2007). BIS



approved 17,945 applications, returned 3,171 applications without action, and denied 177 applications. Of these 21,293 licenses, 1020 license applications were for reexports.

-- In 2008, State/DDTC received 83,000 license application requests which included prior approvals requested for brokering activities.

¶13. How many licensing or permit officers do you have to manage these applications?

-- DOC/BIS has approximately 50 licensing officers, in addition to approximately an additional 50 employees that draft regulations, conduct outreach, and assess compliance.

--State/DDTC has 57 licensing officers.

¶14. Is compliance and enforcement handled in the same group or another entity? If handled by another entity, what resources are dedicated to compliance and enforcement?

-- Dual-use item compliance and enforcement is handled within several parts of DOC/BIS. BIS has counselors who answer questions from exporters and also a group within its licensing administration that perform outreach and audits on compliance. The enforcement administration includes analysts who screen all new license applications received and Special Agents who handle all aspects of enforcement. The compliance and enforcement activities are coordinated, and the enforcement agents work closely with other agencies as appropriate. BIS has more than 100 compliance and Special Agents involved in dual-use enforcement.

-- Civil enforcement of the defense trade is the responsibility of the Office of Defense Trade Controls Compliance. DDTC Compliance has a staff of approximately 35 people generally responsible for civil enforcement of the AECA and ITAR as well as criminal enforcement support. Criminal enforcement is the responsibility of the federal law enforcement community. Criminal investigations are primarily conducted by the Department of Homeland Security/ Immigration and Customs Enforcement and the Federal Bureau of Investigation.

-- The Department of Justice, s U.S. Attorneys are responsible for criminal prosecution.

#### End Use Verification

¶1. Do you conduct post shipment end use/end user verifications?

-- Yes.

¶2. Is there legislative authority to conduct such verifications? Please elaborate.

-- Section 12(a)(1) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2711(a)(1)), authorizes BIS to conduct pre-license inspections and post-shipment investigations of dual-use items licensed for export. The Arms Export Control Act (22 U.S.C. 2778(e)), Sections 38g and 40A, authorize the conduct of end-use monitoring of exported defense articles (including technical data) and services to ensure against diversion or misuse.

¶3. What kind of training do verification officers receive?

-- DOC/BIS Special Agents, who are law enforcement officials trained and specialized in export regulatory investigations and assigned to a specific overseas post (i.e., China, Hong Kong, India, Moscow, United Arab Emirates (UAE)), perform verifications. These Export Control Officers (ECO) are responsible for conducting verification checks on foreign entities within their assigned regions. Additionally, U.S. based Special Agents will go to other countries to conduct verification visits. BIS also relies on Foreign Commercial Service Officer assigned to various U.S. Embassies around the

world. When a verification check is needed in a region where an ECO is not assigned, BIS requests these embassy officers complete a verification visit.

-- Special Agents receive law enforcement training conducted through Federal Law Enforcement Training Centers. This training includes criminal investigation techniques (e.g., conducting interviews). Embassy officers receive broad-level training on various topics that may arise at duty stations. Each newly assigned officer on rotation from foreign assignment receives a two hour block of training on how to conduct verification visits. In addition, each foreign post has access to a verification guide to help the officer through visits. BIS reviews and updates this guide periodically.

-- Blue Lantern end-use checks are generally conducted by U.S. foreign service officers at embassies worldwide. Training for embassy officers in Blue Lantern end-use monitoring should include DDTC-sponsored training sessions and briefings, and self-training through the Blue Lantern guidebook.

14. What verification activities are carried out during a verification check (documentation reviews, physical examination of premises and/or equipment, other)?

-- DOC/BIS verification activities include, but are not limited to:

- Confirm if a party listed on the export transaction is indeed involved in the transaction.
- Verify whether or not the proposed disposition of the items is consistent with normal business practices.
- Help ensure that the foreign party (usually the ultimate consignee or end-user) understands its responsibilities under U.S. law.
- Confirm whether or not goods exported from the United States actually were received by the appropriate ultimate consignee.
- Determine if those goods are being used in accordance with the provisions of any supporting export license or applicable license exception.

-- During the visit the officer will perform:

- Documentation reviews: exporter invoices, shipping documents, and applicable export licenses);
- Background checks; and
- Physical examinations of premises and/or equipment and other means of verifying the bona fides of the parties and the transaction.

-- State/DDTC licensing and compliance officers will review documentation and may contact an exporter/manufacture to confirm details of a license prior to approval.

-- During a pre-license check, a Blue Lantern officer will typically:

- Contact the prospective end-user of the USML export to confirm authenticity of the transaction.
- Contact any intermediary consignees, especially if they have not previously been on a license, to confirm bona fides. This is typically done via site visit and interview with company principals.
- Contact host government for any additional information on companies and/or to verify the legitimacy of importing the articles into the host country.
- Educate foreign parties on responsibilities under U.S. law and regulations

-- For a post-shipment verification, Blue Lantern will, inter alia:

- Confirm receipt of export; confirm proper end-use and end-user (including physical inspection, as necessary).
- Ensure that the actual export matches information

included on the license application.

- Identify any possible problems and report on any variances with approved export license for possible civil or criminal inquiry.
- Educate foreign parties on responsibilities under U.S. law and regulations.

15. Are only licencable commodities (i.e. those goods for which a permit has been issued) verified? Do you conduct end use checks on Watch List (dual use) goods?

-- DOC/BIS conducts verification checks on all dual-use items subject to the EAR. This includes items which require a license for export and items which do not. Subjects of checks are sometimes on various Watch Lists, but this is not a prerequisite to select a target of a verification visit.

-- State/DDTC conducts Blue Lantern end-use checks on exports of defense articles, technical data, and services, including licensed agreements.

16. Are verification checks included as a licence/permit condition?

-- Occasionally yes, but not always. Based on various factors and reviews there are situations when DOC/BIS will issue a license and require a post-shipment verification as a license condition. In other situations, BIS will occasionally require that a pre-license check be conducted before authorizing the export license. All other checks are selected through information and transaction specific reviews. Only occasionally does DDTC make end-use verification a condition of a license. Under separate U.S. legislation, end-use checks are required on all exports of lethal defense articles to Iraq.

17. What selection criteria are used to select companies/goods for verification?

-- Numerous factors are considered when selecting transactions for verification. These include, but are not limited to, country of destination, sensitivity of the item exported, licensing history of the parties involved in the transaction, and background information of the entities involved in the transaction (e.g., type of business, available information about activities that may raise concerns). In some instances a license application will be held until a pre-license check can be conducted, to address concerns raised by agencies during the deliberative process. This is one tool to inform the agencies when considering a new foreign party not previously screened by the USG.

18. Is advance notification required/ provided to foreign countries and/or companies that are the subject of verifications? Do you enter into any bilateral agreements with countries to permit such verifications? If so, in what form and by whom?

-- DOC/BIS reaches out to both foreign governments and entities, as appropriate, to obtain assistance in coordinating visits. In certain circumstances, BIS does enter into a separate verification visit agreement. These agreements help outline processes and methods for conducting visits. In the majority of countries, the verification process is not a formal agreement, but is conducted on a case-by-case basis by working directly with the foreign entity to arrange a verification visit. The formal verification permits are administered through a foreign agreement by BIS. DDTC does not provide advance notification to countries or companies, nor does it have any bilateral agreements to conduct verifications. DDTC conducts regular overseas outreach visits to educate foreign governments and industry, and actively solicits their cooperation in completing end-use checks.

19. What actions are taken if a country or company refuses to allow the verification?

-- For DOC/BIS, a variety of options exist if a country or company refuses to allow verification. Options include, but are not limited to, placing the company on an internal Watch List, making a recommendation to deny current pending and future export license applications, placing the company on the BIS Entity List, or taking appropriate investigative actions.

-- Any refusal to cooperate with a State/DDTC Blue Lantern pre-license check will result in the removal of the party in question or denial of the license, and watchlisting of the company. Refusal to cooperate on a post-shipment verification will result in watchlisting of the company with a recommendation to deny future licenses, as well as referral for possible civil or criminal enforcement action, depending on the nature of the original export transaction involved.

¶10. Are the results of verifications used in future permit/licence application requests?

-- Yes, once a verification visit has been conducted, the information and final recommendations are maintained within an internal database for future reference and to be used for follow-on enforcement actions as well as future license requests.

¶11. Are there penalties for non-compliance? If so, what are they (e.g. denial of export privileges, fines, Watch lists) and what is the legislative basis for their application? How are they assessed and by whom? Against who are they assessed - exporter, consignee/end user?

-- No, there are no automatic penalties administered as a result of refusing to allow DOC/BIS to conduct a verification visit; however, there are potential negative consequences for the party, as outlined above in question #9.

#### Access to facilities

¶1. Which categories of facilities are considered sensitive and require appropriate security screening for access? (a) government science and technology laboratories (defence, health, agriculture, other?); (b) government departments; (c) sensitive industries (e.g., nuclear, chemical related); (d) university research facilities; (e) government/industry partnership related (i.e. joint funded)

-- All the above are considered sensitive and require appropriate security screening for access.

¶2. What is considered in determining sensitivity of a facility?

-- We consider the classified work being carried out, technology availability, access to expertise, and the material housed at the facility.

¶3. Does your government have the right to approve access by foreigners to all of your sensitive facilities?

-- In general, yes. Sensitive facilities have different requirements based on the categories listed above in question #2 and the more sensitive the facility - the more federal oversight. Depending on the applicant's nationality, their visa application, which would include details of their travel plans, may be subject to a Visas Mantis review.

END NON-PAPER

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REPORTING DEADLINE  
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¶4. (U) Post should report results within seven business days of receipt of this cable. Please slug replies for ISN, T, and WHA. Please use the caption SIPDIS in all replies.

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POINT OF CONTACT

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¶5. (U) Washington point of contact for follow-up information is ISN/CPI Lisa Meyers, 202-736-7939, meyersla@state.gov.

¶6. (U) Department thanks Post for its assistance.

CLINTON